FARAD CONTINUATION SHEET NO.:

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

C.A.NO.3538/2004	IN	F.A.NO.210/2003
	WITH	
C.A.NO.3539/2004	IN	F.A.NO.211/2003
	WITH	
C.A.NO.3540/2004	IN	F.A.NO.212/2003
	WITH	
C.A.NO.3541/2004	IN	F.A.NO.213/2003
	WITH	
C.A.NO.3542/2004	IN	F.A.NO.214/2003
	WITH	
C.A.NO.3543/2004	IN	F.A.NO.215/2003
	WITH	
C.A.NO.3544/2004	IN	F.A.NO.216/2003
	WITH	
C.A.NO.3545/2004	IN	F.A.NO.217/2003
	WITH	
C.A.NO.3546/2004	IN	F.A.NO.218/2003
	WITH	
C.A.NO.3547/2004	IN	F.A.NO.219/2003
	WITH	
C.A.NO.3548/2004	IN	F.A.NO.220/2003
	WITH	
C.A.NO.3549/2004	IN	F.A.NO.221/2003
	WITH	
C.A.NO.3550/2004	IN	F.A.NO.222/2003
	WITH	
C.A.NO.3551/2004	IN	F.A.NO.223/2003
	WITH	
C.A.NO.3552/2004	IN	F.A.NO.224/2003
	WITH	
C.A.NO.3553/2004	IN	F.A.NO.225/2003
	WITH	
C.A.NO.3554/2004	IN	F.A.NO.226/2003
	WITH	
C.A.NO.3555/2004	IN	F.A.NO.227/2003
	WITH	
C.A.NO.3556/2004	IN	F.A.NO.228/2003
	WITH	
C.A.NO.3557/2004	IN	F.A.NO.229/2003
	WITH	
C.A.NO.3558/2004	IN	F.A.NO.230/2003
	WITH	
C.A.NO.3559/2004	IN	F.A.NO.231/2003
	WITH	
C.A.NO.3560/2004	IN	F.A.NO.232/2003
	WITH	
C.A.NO.3561/2004	IN	F.A.NO.233/2003
	WITH	
C.A.NO.3562/2004	IN	F.A.NO.234/2003

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.R.V. Pai with Mr.S.M.Kamble for applicants.
Mr.K.K.Tated, AGP for respondent.

CORAM : H.L GOKHALE &
R.S.MOHITE, JJ.
DATED : 22nd December 2004

P.C. :

1. Heard Mr.Pai for the applicants. Mr.Tated, AGP appears for the respondent-State Government and the Land Acquisition Officer.

2. All the above Civil Applications seek directions to the respondent to deposit the balance of the decretal amounts with interest in prayer clause (a). Prayer clause (b) is an additional prayer clause which prays for withdrawal of the decretal amount to the extent of Rs.25/- without furnishing the Bank Guarantee and the remaining amount by furnishing 50% Bank

Guarantee.

3. The applicants (original claimants) are owners of the land situate at Mouje Panvel, Taluka Panvel, District Raigad, which is a town on the outskirts of Mumbai city. The case of the applicants is that similar orders have been passed by different Division Benches from time to time, including the order dated 19th July 2002 passed in Civil Application No.2756 of 1998 in First Appeal No.372 of 2002 and the order dated 15th December 2003 in Civil Application No.4438 of 2003 in First Appeal No.637 of 2001. Mr.Tated, learned Assistant Government Pleader, points out that as far as First Appeal No.372 of 2002 is concerned, although a withdrawal at the rate of Rs.25/- per sq. meter was granted under the order dated 19th July 2002, on which order Mr.Pai, learned

Counsel appearing for the applicants, has relied upon, when the First Appeal was finally heard the compensation was settled at Rs.25/- per sq. meter. He has drawn our attention to the order dated 29th April 2004 passed in First Appeal No.372 of 2002. It was following upon the judgment delivered by the same Division Bench in First Appeal No.757 of 2003 on 31st March 2004. Mr.Tated, therefore, submits that if the matter is to be settled at Rs.25/- per sq. meter, the respondent would agree thereto. He adds that whenever the distance of the land from the National Highway is more, a lesser compensation has been awarded and submits that if that is so, the lesser amount of compensation would be computed. Mr.Tated has further submitted that the applicants herein will not be eligible to the 12% component

under Section 23(1A) of the Land Acquisition Act, 1894. We must as well add that Mr.Pai has pointed out that the applicants are claiming compensation at the rate of Rs.60/- per sq. meter.

4. Having noted the submissions of both the Counsel, we are of the view that the exact rate of compensation will have to be decided when the First Appeals are heard finally. We quite see the force in the submission of Mr.Tated that the present matters are similar to those which are decided by the earlier Division Bench and there is no reason to depart from that yardstick. The submissions of both the parties will be gone into when the Appeals filed by the State Government and the Cross Appeals filed the applicants herein are heard and decided. As of now, we are of the view that the State Government

should deposit the decretal amounts as prayed for in prayer clause (a) of the Civil Application. This is because the Appeals of the State Government are already admitted and there is no reason why the State Government should not be directed to deposit the decretal amounts. We grant prayer clause (a) of the Civil Application as it is. As far as prayer clause (b) is concerned, we are of the view that since the hearing of the Appeals may take their own time, the applicants should be permitted to withdraw from the decretal amounts the amounts that would become due to them at Rs.25/- per sq. meter or at the lesser rate of the market value, if so awarded by the Reference Court. We may note that the Reference Court has awarded the compensation at the rate ranging from Rs.18/- to Rs.27/-. We make it clear that the

withdrawal will be without considering the component under Section 23(1A) of the Land Acquisition Act, 1894, but after including the component of solatium. The amounts will be permitted to be withdrawn without the requirement of furnishing any security. The State Government is directed to deposit the decretal amounts by the end of February 2005 and on those deposits being made, it will be open to the applicants to move the Reference Court for withdrawal in terms of the order passed.

5. With this order, all the Civil Applications are disposed of.

6. All the parties will act on an authenticated copy of this order.

(H.L.GOKHALE, J.)

(R.S.MOHITE, J.)